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EASTERN DISTRICT OF TEXAS

KEVIN SMITH,	§	
Petitioner,	8 8 8	
versus	§	CIVIL ACTION NO. 1:19-CV-96
DIRECTOR, TDCJ-CID,	8	
Respondent.	§ §	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Kevin Smith, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The magistrate judge recommends dismissing the petition without prejudice as successive.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. No objections were filed to the Report and Recommendation.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal

constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde v. Dretke, 362

F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish

that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to

debate among jurists of reason, that a court could resolve the issues differently, or that the

questions presented are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-

84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor

of the petitioner, and the severity of the penalty may be considered in making this determination.

See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issue of whether this petition is successive

is subject to debate among jurists of reason. The factual and legal questions raised by petitioner

have been consistently resolved adversely to his position and the questions presented are not

worthy of encouragement to proceed further. As a result, a certificate of appealability shall not

issue in this matter.

SIGNED at Beaumont, Texas, this 16th day of March, 2020.

MARCIA A. CRONE

Maria a. Crone

UNITED STATES DISTRICT JUDGE

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